

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/24/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000132

FILED: _____

STATE OF ARIZONA

BARTON J FEARS

v.

JESSIE M CHAMBERS

KERRIE M DROBAN

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8944128

Charge: ASSAULT

DOB: 03/18/55

DOC: 06/01/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

On February 27, 2001, the Appellant was found guilty of Assault, a class 1 misdemeanor in violation of A.R.S. 13-

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1203(A)(1). At sentencing, the Court ordered that Appellant be placed on 3 years summary probation, attend the SASS Program, complete domestic violence counseling, and serve 20 days in jail with credit for one day time served and 17 days to be suspended pending successful completion of the domestic violence counseling. Appellant filed a timely Notice of Appeal.

Counsel for Appellant has filed a brief pursuant to Anders v California¹ and State v. Leon². Counsel has avowed that there are no arguable questions of law and has requested that this Court search the record for fundamental error pursuant to A.R.S. Section 13-4035. This Court had previously granted Appellant the opportunity to file a supplemental brief *pro se*, but none has been filed.

The Court has considered and reviewed the record of the proceedings from the Phoenix Municipal Court, exhibits made of record and the memoranda submitted. This Court has found no errors and has reviewed the record to make an independent determination that sufficient evidence was presented to sustain the judgment of guilt. When reviewing the sufficiency of the evidence, an appellant court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.³ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.⁴ If conflicts in evidence exists, the appellant court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁵ An appellant court shall afford great weight to the

¹ 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

² 104 Ariz. 297, 451 P.2d 878 (1969).

³ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁴ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁵ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

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trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁶ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁷ The Arizona Supreme Court has explained in State v. Tison⁸ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁹

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for further proceedings.

⁶ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁷ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁸ SUPRA.

⁹ Id. At 553, 633 P.2d at 362.